

PTO/SB/21 (02-04)

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## TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	09/745,098
Filing Date	12/20/2000
First Named Inventor	Carlos Orlando Vilacha Zanoni
Art Unit	3727
Examiner Name	Nathan Jeffrey Newhouse
Total Number of Pages in This Submission	Attorney Docket Number 286765-00001

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____  <input type="checkbox"/> Remarks	<input type="checkbox"/> After Allowance communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): RETURN POSTCARD

### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	David C. Jenkins Eckert Seamans Cherin & Mellott, LLC
Signature	
Date	July 8, 2005

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Typed or printed name	David C. Jenkins
Signature	
	Date July 8, 2005

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Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

# FEE TRANSMITTAL For FY 2005

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT	(\$ ) 250.00
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## Complete if Known

Application Number	09/745,098
Filing Date	12/20/2000
First Named Inventor	Carlos Orlando Vilacha Zanoni
Examiner Name	Nathan Jeffrey Newhouse
Art Unit	3727
Attorney Docket No.	286765-00001

## METHOD OF PAYMENT (check all that apply)

Check  Credit Card  Money Order  None  Other (please identify): \_\_\_\_\_  
 Deposit Account Deposit Account Number: 02-2556 Deposit Account Name: Eckert Seamans Cherin & Mellott

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

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 Charge any additional fee(s) or underpayments of fee(s)  Credit any overpayments

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## FEE CALCULATION

### 1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fees Paid (\$)
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

### 2. EXCESS CLAIM FEES

#### Fee Description

Each claim over 20 or, for Reissues, each claim over 20 and more than in the original patent

Fee (\$)	Small Entity Fee (\$)
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50 25

Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent

200 100

Multiple dependent claims

360 180

#### Total Claims

#### Extra Claims

#### Fee (\$)

#### Fee Paid (\$)

#### Multiple Dependent Claims

#### Fee (\$)

#### Fee Paid (\$)

- 20 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of total claims paid for, if greater than 20

#### Indep. Claims

#### Extra Claims

#### Fee (\$)

#### Fee Paid (\$)

- 3 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of independent claims paid for, if greater than 3

### 3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
_____ - 100 = _____	/ 50 = _____	(round up to a whole number) x _____	= _____	_____

### 4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other: Appeal Brief (small entity)

Fees Paid (\$)

250.00

## SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 42,691	Telephone 412/566-1253
Name (Print/Type)	David C. Jenkins		Date July 8, 2005

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Examiner: Nathan Jeffrey Newhouse

Group Art Unit: 3727

In re application of:

Carlos Orlando-Vilacha Zanoni

Serial No.: 09/745,098

Filed: December 20, 2000

CROWN CLOSURE HAVING A  
REDUCED RADIUS AND METHOD  
OF MANUFACTURE

Attorney Docket No. 286765-00001

**APPELLANT'S BRIEF ON APPEAL**

July 8, 2005

Commissioner for Patents  
MAIL STOP APPEAL BRIEF - PATENTS  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This is an Appeal from the decision of the Examiner, dated March 24, 2005, rejecting Claims 1-13 of the above-identified application. The claims are set forth in Appendix A, which is attached hereto. Due to the specific nature of the issues involved in this Appeal, an Oral Hearing is not deemed necessary and is not requested.

Please charge David J. Federline Eckert Seamans et al. Credit Card in the amount of \$250.00 to cover the filing fee of this Appeal. Please charge any additional fees or credit any overpayment to Eckert Seaman's Deposit Account No. 02-2556. A duplicate copy of this sheet is enclosed.

**Real Party In Interest**

The real party in interest is Carlos Orlando Vilacha Zanoni.

**Related Appeals and Interferences**

There are no other appeals or interferences known to Appellant or to Appellant's legal representative which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

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### Status of the Claims

Claims 1 and 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Punte* (U.S. Patent No. 2,327,455).

Claims 2-6 and 8-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Punte* (U.S. Patent No. 2,327,455) in view of *Leenaards* (U.S. Patent No. 3,827,594).

Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Punte* (U.S. Patent No. 2,327,455) in view of *Ferngren* (U.S. Patent No. 2,099,056).

Claims 14-16 are withdrawn.

The rejections of claims 1-13 are the subject of this appeal.

### Status of the Amendments

There are currently no amendments to the pending claims. The claims as they stand on Appeal are contained in the Appendix A to this Brief.

### Summary of the Claimed Subject Matter

This invention relates to a cap, generally known as "crown cork" or a "crown closure," used for sealing mainly glass bottles with carbonated (beer, soft drinks, etc) and non-carbonated beverages (juices, sauces; etc). Prior art crown closures have a shell with a generally flat disk, a curved portion, and a depending skirt. When attached to a bottle, the skirt and the curved portion were crimped to conform to the contour of a bottle mouth. The disadvantage of the prior art crown closures was that the curved portion did not conform to the shape of the bottle prior to crimping.

Because of this, prior art crown closures tended to slip during the crimping procedure. *See*, specification at 2-3.

This invention overcomes the disadvantage of the prior art by providing a crown closure 10 wherein the curved portion 28 is adapted to be the same shape as the mouth contour 42 of a bottle. Specification at 3, lines 5-8. Thus, during the crimping procedure, the crown closure is less likely to slip.

**Grounds of Rejection to be Reviewed on Appeal**

Claims 1 and 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Punte* (U.S. Patent No. 2,327,455).

Claims 2-6 and 8-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Punte* (U.S. Patent No. 2,327,455) in view of *Leenaards* (U.S. Patent No. 3,827,594).

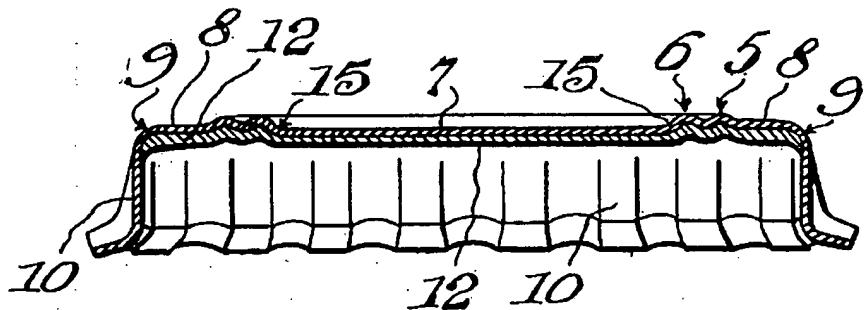
Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Punte* (U.S. Patent No. 2,327,455) in view of *Ferngren* (U.S. Patent No. 2,099,056).

### Argument

#### Claims 1 and 7; Rejected Under 3 U.S.C. § 102(b)

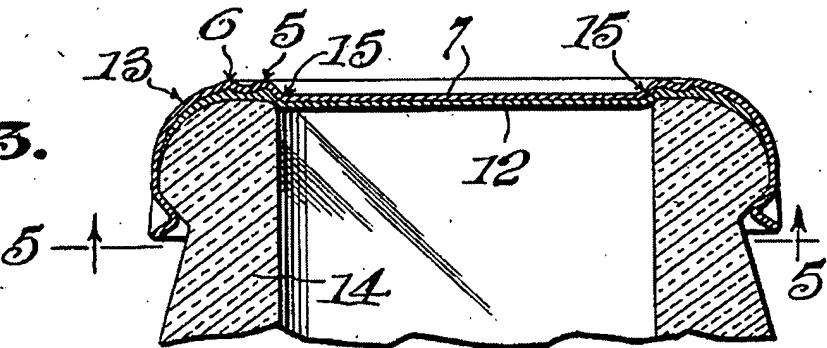
Claims 1 and 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Punte* (U.S. Patent No. 2,327,455). *Punte* discloses a crown closure structured to engage a bottle without a pad or liner. The closure is shown in both a pre-application shape (Figure 2) and a post-application shape (Figure 3). The closure includes a body portion 7 and a sealing portion 8. Page 1 right col., lines 46-47. The sealing portion 8 includes a “turn” 9 and a skirt 10. Page 1 right col., lines 52-53. The skirt 10 is crimped. Page 1 right col., line 54. The “crimps” are more commonly referred to as serrations. As shown in Figure 2, reproduced below, the skirt serrations extend from the bottom of the skirt to, approximately, 70% to 90% of the skirt height, which is over 50% of the length between the distal tip of the skirt and the outer rib “6.” (There is an error on Figure 2 as the specification states that the outer rib should be reference number 6 and not reference number 5 as shown, *see* page 1 right col., line 45-46) The serrations do not, however, extend into the “turn” at point 9. It is further noted that, and is obvious by comparing Figure 2 to Figure 3, the cap in Figure 2 is not adapted to have the same shape as the mouth contour of a bottle.

*Fig.2.*



When the *Punte* crown closure engages a bottle, as shown in Figure 3 reproduced below, approximately the lower 10-20% of the skirt does not adapt to the curved shape of the bottle.

*Fig. 3.*



That is, as noted at Page 2 left col., lines 20-27, “[w]hen the cap is applied to the neck of a bottle or other container in the manner illustrated if Figure 3 of the drawing, the sealing portion 8 of the crown top and the turn thereof at 9 *into the skirt 10* are reshaped or deformed as at 13 to conform perfectly to the sealing surface presented by the neck 14 of the bottle ....” (emphasis added). Thus, the deformation at 13 includes the skirt 10 which, as noted above, includes the serrations.

The Examiner has characterized the deformation as at 13 as the “curved portion” as recited in the present application. March 24, 2005 Office Action at page 5, lines 1-3. As noted above, the deformation 13 only exists in the post-application form of the cap **shown in Figure 3**. The Examiner, however, further asserts that, “[c]learly Figure 2 of *Punte* shows the serrations (lines in skirt 10) stop short of the *curved portion*.” *Id.* at lines 4-5 (emphasis added). As noted above, Figure 2 shows the pre-application shape of the cap. Thus, the Examiner has used the post application shape of Figure 3 to define the “curved portion” which conforms to the shape of the bottle, then argues that the serrations shown in the pre-application shape of Figure 2 do not extend past the “curved portion.” It appears that the Examiner is attempting to equate the “turn” of Figure 2 with the “curved portion” of Figure 3.

The Examiner, however, cannot have it both ways. If the "curved portion" is what is shown in Figure 3, the serrations obviously extend into the curved portion. By way of clarification, the "curved portion" is shown quite clearly by arc 18 shown in Figure 4, reproduced below, which represents the area in which a seal is effected. As noted above, the serrations extend well over 50% of the length between the distal tip of the skirt and the outer rib. Moreover, the *Punte* specification states that the skirt, along with the serrations, are included in the "deformation" which the Examiner has equated with the "curved portion."

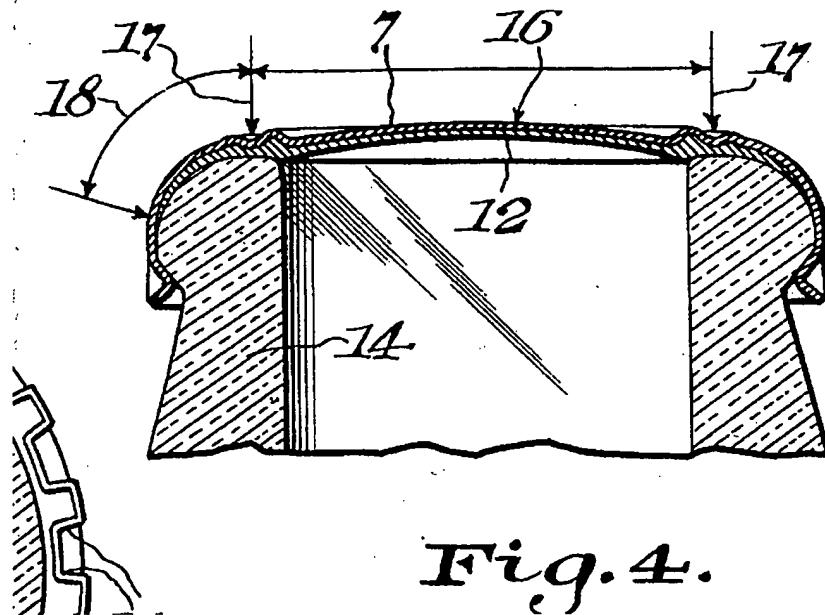


Fig. 4.

Conversely, if the Examiner wishes to define the "curved portion" as point 9 of Figure 2, the Examiner cannot assert that the "curved portion" is adapted to the shape of the bottle. That is, the turn at point 9 is far too acute to conform to the shape of the bottle shown in Figure 3. Thus, the Examiner has failed to show where the *Punte* reference discloses a cap having both a shape conforming to the bottle and a lack of serrations in the curved portion.

The Examiner further asserts that "none of the other figures shown (sic) that the serrations do extend into the curved portion of the crown closure." March 24, 2005 Office Action at page 5, lines 5-7. This argument is baseless as Figure 2 shows

a cross-sectional view of the cap pre-application, wherein the serrations on the back side of the cap may be seen, whereas Figures 3 and 4 show cross-sectional views of the cap post-application, that is, on a bottle, wherein the serrations cannot be shown as the serrations are behind the bottle. As stated above, the serrations extend over more than 50% of the length between the distal edge of the skirt and the outer rib. This length extends into the “curved portion” as defined by the Examiner, e.g. the deformation 13. Moreover, the *Punte* specification states that the skirt, which includes the serrations, are part of the “deformation 13.”

It is further noted that the purpose on the *Punte* reference is to provide a “padless” crown closure. As set forth at page 2 left col., lines 7-12, “[i]t is customary to provide sealing pads of cork or other suitable compressible material in crown caps of the usual type, but it is the purpose of the present invention to provide a crown cap which will effect an efficient seal without such sealing pad inserts.” Instead, the *Punte* reference discloses the use of a sealing compound. Thus, it is clear that those skilled in the art consider a pad or liner to be different from a sealing compound. The present invention recites a liner which is not present in the *Punte* reference.

As stated in MPEP §2131:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference....  
The identical invention must be shown in as complete detail as is contained in the ... claim.

*Id.*, citing *(Verdigaal Brothers v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) and *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, (Fed. Cir. 1989). It is submitted that upon reading the *Punte* reference, one skilled in the art would not consider having a crown closure wherein the curved portion is adapted to be the same shape as the mouth contour of a bottle and wherein the serrations do not project into the curved portion as set forth in both claims 1 and 7.

Accordingly, Appellant requests that the Examiner’s rejection of claims 1 and 7 under 35 U.S.C. §102(b) be reversed.

Claims 2-6 and 8-12; Rejected Under 35 U.S.C. § 103(a)

Claims 2-6 and 8-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Punte* (U.S. Patent No. 2,327,455) in view of *Leenaards* (U.S. Patent No. 3,827,594). *Punte* and its failure to disclose the elements of the present

invention are discussed above. *Leenaards* discloses a crown closure that is shaped to accommodate a seal that engages the lateral face of the bottle to which the closure is attached. That is, the seal is located between the curved portion of the crown closure and the outer side of the bottle. As such, the curved portion of the shell cannot be structured to have the same shape as the container to which the closure will be attached as the curved portion must be shaped to provide a space for the seal. This space is identified by reference number 18 on Figure 2 and described at Col. 4, lines 3-4. *Leenaards* notes that *after* deformation, *i.e.* the crimping procedure, the closure is shaped to the mouth of the container.

Appellant notes that the purpose of the *Punte* invention is to have a crown closure that is “padless,” that is, without a liner, whereas the purpose of the *Leenaards* invention is to have a lateral liner. As such, these references cannot be combined. Moreover, as stated in, *In re Geiger*, 815 F.2d 686, 2 U.S.P.Q.2d 1276 (Fed. Cir. 1987), “obviousness cannot be established by combining teachings of the prior art to produce the claimed invention, absent some *teaching, suggestion, or incentive* supporting combination.” (emphasis added). Put another way, “the mere fact that disclosures or teachings of the prior art *can be* retrospectively combined for the purpose of evaluating obviousness/nonobviousness issue does not make the combination set forth in the invention obvious, unless the art also suggested the desirability of the combination ....” *Rite-Hite Corp. v Kelly Co.*, 629 F.Supp. 1042, 231 U.S.P.Q. 161, *aff'd* 819 F.2d 1120, 2 U.S.P.Q.2d 1915 (E.D.Wis.1986) (emphasis added). Similarly, the court in, *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991), stated that “both the suggestion [to make the claimed apparatus] and the reasonable expectation of success must be found in the prior art, not in the Appellant’s disclosure.”

With regard to *Punte* and *Leenaards*, there is no *teaching, suggestion, or incentive* in either reference to suggest the combination recited by the Examiner. As such, it is not proper to base a rejection under 35 U.S.C. §103(a) on these combination of references. Moreover, neither reference teaches a crown closure wherein the curved portion is adapted to be the same shape as the mouth contour of a bottle and wherein the serrations do not project into the curved portion as set forth in Claims 2-6 and 8-12.

Accordingly, Appellant requests that the Examiner’s rejection of Claims 2-6 and 8-12 under 35 U.S.C. §103(a) be reversed.

Claim 13; Rejected Under 35 U.S.C. § 103(a)

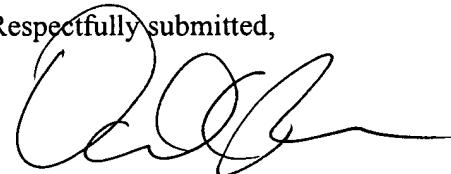
Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Punte* (U.S. Patent No. 2,327,455) in view of *Ferngren* (U.S. Patent No. 2,099,056). *Punte* and its failure to disclose the elements of the present invention are discussed above. *Ferngren* discloses a flexible plastic cap for a flexible bottle. See, Col. 1, lines 40-47. *Ferngren* does not discuss a crown closure. As crown closures and plastic caps are different types of closures, these references cannot be combined. It is again noted that, “obviousness cannot be established by combining teachings of the prior art to produce the claimed invention, *absent some teaching, suggestion, or incentive supporting combination.*” *In re Geiger*, 815 F.2d 686, 2 U.S.P.Q.2d 1276 (Fed. Cir. 1987)(*emphasis added*). Here, there is no suggestion that the cited references should be combined.

Accordingly, Appellant requests that the Examiner’s rejection of Claim 13 under 35 U.S.C. §103(a) be reversed.

Conclusion

It is submitted that Claims 1-13 are patentable over the prior art. Therefore, Appellant respectfully requests that the Board reverse the Examiner’s rejections of Claims 1-13 and remand the application to the Examiner for the issuance of a Notice of Allowance.

Respectfully submitted,



David C. Jenkins  
Registration No. 42,691  
Eckert Seamans Cherin & Mellott, LLC  
600 Grant Street, 44th Floor  
Pittsburgh, PA 15219  
(412) 566-1253  
Attorney for Appellant

1. (Original) A crown closure comprising:
  - a shell having an inside, a top, a skirt, a curved portion and a plurality of serrations which do not project into said curved portion;
  - said curved portion disposed between said top and said skirt;
  - a liner secured to said inside; and
  - wherein said curved portion is adapted to be the same shape as the mouth contour of a bottle.
2. (Original) The crown closure of claim 1 wherein said curved portion has a radius greater than about 1.7 mm.
3. (Original) The crown closure of claim 1 wherein said curved portion has a radius of about 0.157 inches (4 mm).
4. (Original) The crown closure of claim 1 wherein said shell is manufactured from a blank having a diameter of about 1.4 inches (35.5 mm).
5. (Original) The crown closure of claim 1 wherein said shell is formed from a blank having a diameter less than about 1.4446 inches.
6. (Original) The crown closure of claim 1 wherein said shell has twenty serrations.
7. (Original) A closed container comprising:
  - a bottle having a mouth;
  - a crown closure secured over said mouth;
  - said crown closure comprising:
    - a shell having an inside, a top, a skirt, a curved portion and a plurality of serrations which do not project into said curved portion;
    - said curved portion disposed between said top and said skirt;
    - a liner secured to said inside; and
    - wherein said curved portion is adapted to be the same shape as the contour of said mouth.

8. (Original) The closed container of claim 7 wherein said curved portion has a radius greater than about 1.7 mm.

9. (Original) The closed container of claim 7 wherein said curved portion has a radius of about 0.157 inches (4 mm).

10. (Original) The closed container of claim 7 wherein said shell is manufactured from a blank, and said blank has a diameter of about 1.4 inches (35.5 mm).

11. (Original) The crown closure of claim 7 wherein said shell is formed from a blank having a diameter less than about 1.4446 inches.

12. (Original) The closed container of claim 7 wherein said shell has twenty serrations.

13. (Original) The closed container of claim 7 wherein:  
said bottle mouth includes an upper portion and a lower portion with a fulcrum therebetween; and  
said curved portion has a radius that is similar to said upper portion.

14. (Withdrawn) A method of producing crown closures comprising the steps of:

- providing a die press;
- providing metal sheets which may be die pressed into crown closures;
- using said die press to form blanks having a diameter of about 1.4 inches (35.5 mm); and
- using said die press to form crown closures using said blanks.

15. (Withdrawn) The method of claim 14, wherein:  
said crown closures include a shell having an inside, a top, a skirt, a curved portion and a plurality of serrations which do not project into said curved portion; and  
said curved portion has a radius of about 0.157 inches (4 mm).

16. (Withdrawn) The method of claim 14, wherein:  
said crown closures include a shell having an inside, a top, a skirt, a curved  
portion and a plurality of serrations which do not project into said curved portion; and  
said curved portion has a radius greater than about 1.7 mm.